

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the reasons that follow.

Claims 3, 4, 9, 10, 15 and 16 have been canceled. The claims as set forth above, claims 1-2, 7-8 and 13-14 are now pending in this application.

The present invention is directed to the problem of selecting suppliers in an independent supply chain management system where a plurality of stores are independent, a plurality of distributors are independent and a plurality of suppliers are independent. In this context, when restocking orders for stores are generated based on store point-of-sale data and sent to the appropriate distributor, a selection decision regarding which suppliers to use to supply the distributor to meet the store order must be made. However, in an independent supply chain, it is very difficult to obtain comparative information about the suppliers from the suppliers themselves, other than their identity and current price. The present invention uses a supply chain management computer to obtain supplier information such as on-time-performance, order fill rate, invoice (billing) accuracy, payment terms, product quality, and recall history, for example, from a variety of sources including the suppliers themselves and other distributors in the supply chain system. Supplier selection is facilitated by the independent supply chain manager based on this data, and at least one supplier performance parameter is inserted into the supplier electronic order form. The independent supply chain manager can then generate an alert based on a comparison of the supplier performance parameter in the supplier electronic order form to an actual performance of the supplier.

The claims were rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement, because the examiner states that the specification for the application does not appear to support the limitation that the goods sold by the plurality of stores are sales not via the network. This rejection is respectfully traversed and reconsideration thereof is requested.

The specification has numerous references to the sale of food at restaurants. The dictionary definition of "restaurant" is "A place for serving meals to the public." Webster's II New College Dictionary, Houghton Mifflin Company 1995. See also the operation

described for a hotel operation and various other supply chains for retail store supply. See pages 233-244 of the specification. A fundamental problem to which this specification is directed relates to an independent entity (the supply chain manager) attempting to manage independent physical public stores, suppliers and distributors and meld them into a functioning supply chain to compete with the large single retail operations such as Walmart. Online sales negates one of the driving needs for the present invention.

From a procedural standpoint, no prima facie case has been made for the rejection. The MPEP at 2173.05(i) expressly approves negative limitations. The MPEP points to the cases *Ex parte Parks*, 30 USPQ 2d 1234, 1236 (Bd. Pat. App. & Inter. 1993) and *In re Johnson*, 194 USPQ 187, 196 (CCPA 1977) on the issue of basis in the specification for the negative limitation. In *Johnson* alternative elements were positively recited in the specification. The court stated that the "specification, having described the whole, necessarily described the part remaining." In the present case, multiple examples of the invention are provided, including the restaurant example noted above. None of those examples were for online sales. Thus, the present case for a negative limitation is even stronger than in *Johnson*.

In view of the foregoing amendments and remarks, reconsideration of the rejection is requested and an early passage to issue solicited.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Atty. Dkt. No. 062834-0142

Respectfully submitted,

Date _____

By 

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5485
Facsimile: (202) 672-5399

William T. Ellis
Attorney for Applicant
Registration No. 26,874